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**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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<b>Americana Towers Condominium Association</b>	)	
	)	
v.	)	<b>No. 05-0415</b>
	)	
<b>Commonwealth Edison Company</b>	)	

**BRIEF ON EXCEPTIONS OF  
AMERICANA TOWERS CONDOMINIUM ASSOCIATION**

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## **I. INTRODUCTION**

Americana Towers Condominium Association (“Americana”) believes that the Administrative Law Judge’s Proposed Interim Order (“Order”) issued on July 3, 2007 is well reasoned and supported by the record. This brief is limited to three exceptions set forth below. In the first exception, Americana believes that a finding can be made that supports Americana’s assertion that it was over-billed for demand and usage for the contested nine-month period, and proposes its own hypothesis for consideration. In the alternative, Americana submits two exceptions to the Order, one mostly for clarification, and one for reversal since the numbers used in the Order do not conform to the evidence in the record.

## **II. COMED OVERCHARGED AMERICANA FOR EXCESS DEMAND AND USAGE FROM DECEMBER 1992 THROUGH SEPTEMBER 1993**

In an effort to provide its own alternative hypothesis drawn from the facts of the record, and consistent with ComEd’s meter test results, Americana submits the following:

Because ComEd removed the suspect meter 979 from its on-site fitting on 09/16/93, and therefore removed it from the source of its extraneous power, and tested it off-site, days later, in their testing laboratory, meter 979 was not tested at the site while the source of its recorded abnormal movement existed.

The Record is clear that no additional electrical loads were added to the facility between 12/25/92 to 09/16/93. (Order pgs. 8, 9).

Consistent with Americana's contention and consistent with ComEd's meter test results and consistent with the ALJ's alternative hypothesis (Order pgs. 9 – 11), there were fire-damaged electrical cables and newly installed temporary electrical cables that caused a constant electrical "short" that continuously accelerated the turning of ComEd's "electromechanical" meter 979. That condition started when it became prudent to initially install those temporary cables in December 1992. That condition continued for eight months and ended when the electrical contractor returned Americana to full power after installing permanent electrical cables in August 1993, and the recording meter was installed correctly in September 1993.

That condition is commonly known as "creep to ground." That condition occurs in electric appliances and equipment when wires, or their partial strands, are: (1) near or touching other wires; or (2) near or touching the grounding wires; or (3) near or touching the steel pipe grounding conduits - so as to contribute to the "electromagnetic field" which simulated the effect of the flow of additional electrical loads into ComEd's metering facilities. Since the temporary wires were installed on an emergency basis and randomly placed, (criss-crossing under and over each other), while not yet placed into their respective permanent steel pipe conduits, a field of electricity was created which was erroneously recorded as additional loads by meter 979.

However, no additional electricity (kw and kwh) was actually purchased, generated, delivered or sold by ComEd, and no additional electricity was actually consumed by Americana either intentionally or accidentally. The effect of those electrical fields, that occurred only during the entire time that the temporary wires were

in place, created a false impression and was recorded by meter 979 as additional electricity being consumed.

The record is clear that just because a meter tested accurately in ComEd's shop, does not necessarily mean that the customer was billed correctly. (Tr. at 404). Wrong multipliers can be applied by ComEd rendering the resulting billing incorrect. (Tr. at 405). In fact, there are many differentiations in billing versus metering. (Id.) A meter will not function and run correctly if the connecting lines are not hooked-up properly. (Id. at 416).

The abnormality in usage and demand can be attributed to ComEd through its ownership and control of all associated hardware at issue. ComEd owns and controls all the electronic demand and usage sensing equipment associated with the meters at Americana's premises. ComEd installs meters on customers' premises. (Tr. at 360). ComEd owns the meters it installs. (Tr. at 361). ComEd owns the current transformers associated with meters. (Id.). ComEd owns and calibrates the meters and associated sensing instruments. (See Tr. at 407). ComEd houses its meters in a space provided by the customer, and current transformers are in a locked cabinet where electricians should not venture without ComEd's authorization, nor should an electrician who is not an employee or agent of ComEd handle a ComEd meter. (Tr. at 387-388, 389). ComEd tests its own meters, and ComEd tests meters not at the customers' premises, but at its shop in Oak Brook, Illinois. (Tr. at 406). ComEd did not test the sensing instruments or current transformers associated with Meter 979. (Tr. at 409). ComEd reads the meters and bills the customer for usage associated with the ComEd meters. (Tr. at 362).

Finally, ComEd is compensated for its metering and associated equipment costs through its tariffs on file with the ICC. (Tr. at 362).

Americana seeks the ALJ to reconsider the Order to conclude that ComEd should also refund all overpayments made by Americana for the never-used kws and kwhs which were erroneously recorded on meter 979, during at least the abnormally high first eight months of the suspect 9-Month Period, from 12/12/92 to 08/12/93. That eight month period includes the same time frame that new electrical wires were temporarily installed on an emergency basis immediately after a major electrical explosion and fire at the Americana Towers Condominiums early on 12/25/92 and it ended when new wiring was permanently installed into conduits during August 1993, and a new recording meter was installed in September 1993.

### **III. THE ORDER DID NOT TAKE INTO ACCOUNT ERRONEOUSLY BILLED USAGE -- KILOWATT HOURS – FOR THE MONTHS MAY-JUNE, JUNE- JULY AND JULY-AUGUST 1993**

Assuming *arguendo* that Americana's alternative hypothesis is rejected, Americana submits as a point of clarification to the Order's silence regarding billed kilowatt hours for the three summer months in 1993.

Americana submits that charges to its usage, in addition to charges for demand, be refunded for the period May-June, June-July and July-August 1993. The Order holds that Americana's total demand did not reach or exceed 500 kw in three of the four months analyzed in 1993 (May-June, June-July and July-August. (Order pg. 17). The Order further holds that ComEd must refund the difference between actual billing for demand

for the three months in the amount of 121.8 kw in each month. (Id.) Since the ALJ granted one half of the kilowatts of demands during the respective billing periods to be refunded, it is unclear whether associated usage was intended by the ALJ to be refunded for the applicable three months. This section seeks to clarify the Order by adding language appropriate to also specify refunding one half of the associated usage for the respective three months to be consistent with the building's associated load factor.

As argued in Americana's Initial Brief, ComEd Witness Geraghty's load factor analysis contained in ComEd Ex. 1.1 and discussed in ComEd Ex. 1.0 and during cross-examination illustrates the necessity of including refunds for incorrectly billed usage to accompany refunds in incorrectly billed demand. Mr. Geraghty asserts that the increase in demand was accompanied by a symmetrical increase in usage, and such analysis shows that such billings were in error due to the magnitude of the energy that would have to be consumed at the facility without the accompanying increase in demand. The load factor stays the same when both the KW and KWHs triple. (Tr. at 331). As such, the load factor, the calculated ratio where the denominator is the amount of energy a customer would use if it consumed the maximum demand at all times during the billing period; the numerator is the amount of energy actually used during the period. (See Proposed Order Footnote 12) would essentially double, to an impossible factor exceeding 100%.

Table 1 below shows the applicable calculation for taking into account the applicable load factors using: (1) as ComEd actually billed Americana; (2) as the ALJ proposed, with only half of the kws to be refunded and not half of the kwhs; and (3) the resulting symmetrical calculation. This illustration demonstrates the

appropriateness of including kwhs in addition to kws as an additional refund component to Americana.

Table 1:

During 05/13/93 to 06/14/93:

(1) Actually Billed  $\frac{127,200 \text{ KWHrs}}{32 \text{ days} \times 24 \text{ hrs/day} \times 243.6 \text{ KW s}}$  equals **68.0%** Load Factor

(2) ALJ Proposed  $\frac{127,200 \text{ KWHrs}}{32 \text{ days} \times 24 \text{ hrs/day} \times 121.8 \text{ KW s}}$  equals **136.0%** Load Factor

(3) IF Granted  $\frac{63,600 \text{ KWHrs}}{32 \text{ days} \times 24 \text{ hrs/day} \times 121.8 \text{ KW s}}$  equals **68.0%** Load Factor

During 06/14/93 to 07/14/93:

(1) Actually billed  $\frac{124,400 \text{ KWHrs}}{30 \text{ days} \times 24 \text{ hrs/day} \times 243.6 \text{ KW s}}$  equals **70.9%** Load Factor

(2) ALJ Proposed  $\frac{124,400 \text{ KWHrs}}{30 \text{ days} \times 24 \text{ hrs/day} \times 121.8 \text{ KW s}}$  equals **141.8%** Load Factor

(3) IF Granted  $\frac{62,200 \text{ KWHrs}}{30 \text{ days} \times 24 \text{ hrs/day} \times 121.8 \text{ KW s}}$  equals **70.9%** Load Factor

During 07/14/93 to 08/12/93:

(1) Actually billed  $\frac{125,940 \text{ KWHrs}}{29 \text{ days} \times 24 \text{ hrs/day} \times 243.6 \text{ KW s}}$  equals **74.3%** Load Factor

(2) ALJ Proposed  $\frac{125,940 \text{ KWHrs}}{29 \text{ days} \times 24 \text{ hrs/day} \times 121.8 \text{ KW s}}$  equals **148.6%** Load Factor

(3) IF Granted  $\frac{62,970 \text{ KWHrs}}{29 \text{ days} \times 24 \text{ hrs/day} \times 121.8 \text{ KW s}}$  equals **74.3%** Load Factor

Accordingly, Americana seeks modification to the Order on Page 17 to reflect this change:

In sum, we hold that Americana's total demand did not reach or exceed 500 kw in three of the four months analyzed (May-June, June-July and July-August). Thus, Americana did not use or demand 500 kw in three of twelve billing months. Accordingly, we conclude that Americana should not have been switched to Rate 6T. ComEd must refund the difference between actual billing on Rate 6T and the amount Americana would have been billed from the May-June 1993 billing month until the June-July 1999 billing month, with associated interest. ComEd must also refund the difference between actual billing for demand and usage for the three



pertinent months (May-June, June-July and July-August 1993) and the amount we calculate here as erroneously billed (that is, 121.8 kw in each month plus associated usage), with associated interest. The amount of Americana's refund, as defined here, is not apparent from the record. That amount will need to be determined in the manner described later in this Order.

Similarly, in Section III, the Findings and Ordering Paragraphs, number (4) should be modified to reflect this change:

ComEd erroneously estimated Americana's peak demand on meter 979 during the billing months of May-June, June-July and July-August of 1993, thereby: a) wrongly estimating the total peak demand at Americana's premises at above 500 kw during each of those months, resulting in the transfer of Americana's account to Rate 6T in derogation of ComEd's Rate 6 tariff, which does not authorize such transfer unless the customer has reached or exceeded 500 kw of demand in three of twelve consecutive billing months; and b) erroneously billing Americana for 121.8 kw of demand and associated usage in each of the three pertinent months; these errors resulted in refundable overcharges and interest in an amount to be calculated as directed in section II.J. of this Order;

#### **IV. COMED OVERCHARGED AMERICANA FOR EXCESS KILOWATT HOURS OF ENERGY DURING JUNE – JULY 1999**

While the load factor analysis in the previous section focused on the impossible nature of the load factor exceeding 100%, this issue focuses on the improbable nature of a near 100% load factor. According to the Record, the billed usage during the one month period from 6/10/99 to 7/12/99 was 337,112 kwh. That resulted in a load factor of 98.9%, as shown calculated below:

$$\frac{337,112 \text{ kwh}}{32 \text{ days} \times 24 \text{ hrs/day} \times 443.9 \text{ kw}} \text{ equals } 98.9\%$$

Also according to the Record, there was never any load factor, before or after 6/10/99 to 7/12/99 that has ever approached 90%, let alone 99%. The load factor during the

corresponding period one year earlier, during 6/10/98 to 7/10/98 was 69.6%. (231,142 kwh/30 days/24 hrs/day/461.9 kw = 69.6%).

In addition, on page 26 the Order states:

Since Americana's allegation rests on the high load factor calculated for the billing period – 98.8%, Tr. 378 (Geraghty) – Americana's inference of error is dependent upon the uniqueness of that factor. However, Americana's load factor was 98% in both the parallel billing month of June 12-July 12, 1995 and in the September 11-October 10, 1995 billing month. ComEd Ex. 1.1. Accordingly, even though Americana's usage in June-July 1999 is unusually high, its load factor is not. Therefore, given the evidentiary record before us, there is no basis for the conclusion that ComEd mistakenly measured and billed Americana's kwh in the relevant month.

Unfortunately, the two load factors used as reference in the Order may be inaccurate.

The calculated load factor during June 12, 1995 to July 12, 1995, is 74.2% (not 98%).

$$\frac{231,456 \text{ kwh}}{30 \text{ days} \times 24 \text{ hrs/day} \times 432.9 \text{ kw}} \text{ equals } 74.2\%$$

The calculated load factor during September 11, 1995 to Oct. 10, 1995, is 54.2% (not 98%).

$$\frac{133,505 \text{ kwh}}{29 \text{ days} \times 24 \text{ hrs/day} \times 353.8 \text{ kw}} \text{ equals } 54.2\%$$

Clearly, a total usage of 337,112 kwh during 6/10/99 to 7/12/99 was over 100,000 more than any other month in the period covered in Americana Ex. 1.1. While statistically possible, it is extraordinarily improbable that the building's load would have had to be operating 99% of the time for 32 days, 24 hours a day. (Initial Brief pg. 29). While not completely impossible, the improbability of this occurrence should arise to a reasonable inference that the facility was overbilled, especially in light of the frequency of errors demonstrated over the years by ComEd. The inference that this billing was incorrect has not been adequately refuted or explained. Therefore, Americana seeks the

Order's modification in the second paragraph on page 26 of the Order by replacing the current text with the following:

Thus, Americana asks the Commission to find that its measured energy usage was too high because it was very high. While a bill for unusually high consumption could be erroneous, it could also simply reflect unusually high usage, accurately measured. Americana's allegation rests on the high load factor calculated for the billing period - 98.8%, Tr. 378 (Geraghty) – Americana's inference of error is dependent upon the uniqueness of that factor. Given that this month registered over 100,000 kwh more than any month contained in Americana Ex. 1.1, ComEd mistakenly measured and billed Americana's kwh in the relevant month. Accordingly, ComEd is directed to refund Americana in accordance with 1J below.

The Findings and Ordering Paragraphs should be modified to include the following language:

ComEd erroneously measured American's usage during the billing period June-July 1999, resulting in refundable overcharges and interest in an amount to be calculated as directed in section IIJ of this Order.

## **V. CONCLUSION**

WHEREFORE, Americana respectfully requests that the above clarifications be included in the Final Order adopted in this proceeding.

Respectfully submitted,

AMERICANA TOWERS  
CONDOMINIUM ASSOCIATION

A handwritten signature in black ink, appearing to read "Michael Munson", written in a cursive style.

By \_\_\_\_\_  
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